



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JUN 14 2011

Brett G. Kappel, Esq.  
Arent Fox LLP  
1050 Connecticut Avenue, NW  
Washington, DC 20036

RE: MUR 6268  
Alan Grayson  
Committee to Elect Alan Grayson  
and Paul Ashcraft, in his official  
capacity as treasurer

Dear Mr. Kappel:

On June 10, 2011, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 441i(e), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondents and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Margaret Ritzert  
Attorney

Enclosure  
Conciliation Agreement

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of

Alan Grayson  
Committee to Elect Alan Grayson and  
Paul Ashcraft, in his official capacity  
as treasurer

MUR 6268

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
2011 MAY 24 PM 1:04  
OFFICE OF GENERAL  
COUNSEL

**CONCILIATION AGREEMENT**

This matter was initiated by a signed, sworn, and notarized complaint by Steve Gillespie.

The Federal Election Commission ("Commission") found reason to believe that Alan Grayson and the Committee to Elect Alan Grayson and Paul Ashcraft, in his official capacity as treasurer, (collectively, "Respondents") violated 2 U.S.C. § 441i(e).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Alan Grayson, formerly a member of the U.S. House of Representatives from Florida's 8th Congressional District, was a candidate for reelection in 2010.

1           2. The Committee to Elect Alan Grayson and Paul Ashcraft, in his official capacity as  
2 treasurer, ("Committee") is former Representative Grayson's authorized principal campaign  
3 committee.

4           3. On March 21, 2010, the Committee sent an e-mail forwarding the invitation prepared  
5 by the Maddox host committee from the address alangrayson@graysonforcongress.com to an  
6 unknown number of persons on a distribution list, inviting them to "Please Join Congressman  
7 Alan Grayson" at a March 25, 2010 fundraising reception benefitting Scott Maddox, a candidate  
8 for Florida Commissioner of Agriculture & Consumer Services. The invitation suggested a \$500  
9 contribution, noting that "[c]ontributions are limited to \$500 per person or corporate entity. The  
10 maximum contribution for an individual, corporation, PAC, or trust is \$500 for the primary and  
11 \$500 for the general (\$1,000 for the entire cycle)." It also provided instruction on how to send  
12 contributions and identified a web page specifically dedicated to making contributions.

13           4. The e-mail contained two different disclaimers. First, the invitation included a  
14 disclaimer stating that it was a political advertisement paid for and approved by Scott Maddox,  
15 and that the purchase of a ticket for, or contribution to, the event would constitute a contribution  
16 to Maddox. Following the invitation, there was an additional disclaimer on the e-mail reading,  
17 "Political Advertisement Paid for and Approved by Alan Grayson, Democrat, for U.S. Congress,  
18 Florida District 8."

19           5. Representative Grayson, who did not attend the event due to a vote in Congress on  
20 March 25, 2010, only learned of the final invitation on March 24, 2010, the day before the event,  
21 when a reporter sent him a copy of the complaint in this matter. On March 24, 2010, the House  
22 was in session, there were nine roll-call votes, and Rep Grayson's committees held three  
23 hearings. On March 25, 2010, there again were nine roll-call votes, and there was a Financial  
24 Services Committee hearing and a markup and further voting in the Science and Technology

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1 Committee. On March 24 and 25, 2010, Rep. Grayson took no action to retract or modify the  
2 solicitation of corporate funds. In addition, the Committee posted the invitation on its website,  
3 without modification, and let it remain there for several months following the event.  
4 Respondents contend that the failure to remove the invitation from the website was inadvertent.

5 6. The Federal Election Campaign Act of 1971, as amended, ("the Act") prohibits  
6 candidates or individuals holding federal office, or their agents, (collectively, "covered persons")  
7 from soliciting funds in connection with a non-federal election unless the funds comply with the  
8 source restrictions for contributions in connection with a federal election. 2 U.S.C.  
9 § 441i(e)(1)(B), 11 C.F.R. § 300.62. The term "agent" means "any person who has actual  
10 authority, express or implied, to" solicit funds on behalf of an individual who is a federal  
11 candidate or a federal officeholder in connection with any election. 11 C.F.R. § 300.2(b)(3).  
12 Accordingly, covered persons may not solicit corporate contributions in connection with a non-  
13 federal election. See 2 U.S.C. § 441b(a). The covered individual may not approve, authorize,  
14 agree, or consent to appear in publicity that would constitute a solicitation by the covered person  
15 of funds that are in excess of the limits or prohibitions of the Act, regardless of the appearance of  
16 a disclaimer limiting the solicitation to federally-compliant funds. Advisory Opinion 2003-36  
17 (Republican Governors Association). See also Participation by Federal Candidates and  
18 Officeholders at Non-Federal Fundraising Events, 75 Fed. Reg. 86, 24375, 24381-83  
19 (May 5, 2010) (issued subsequent to the activity at issue in this matter).

20 7. Commission regulations define "solicitation" as an oral or written communication  
21 that, construed as reasonably understood in the context in which it is made, contains a clear  
22 message asking, requesting, or recommending that another person make a contribution, donation,  
23 transfer of funds, or otherwise provide anything of value. 11 C.F.R. § 300.2(m). Commission  
24 regulations provide specific examples of solicitations, including communications that provide

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1 instructions on how or where to send contributions or that identify a website specifically  
2 dedicated to facilitating the making of contributions. 11 C.F.R. 300.62(m)(1)(ii)-(iii).

3 8. Respondents contend that:

4 The Grayson campaign volunteer who authorized the distribution of the March 21, 2010  
5 e-mail did not have the actual authority, express or implied, to do so without Rep. Grayson's  
6 prior express approval. Accordingly, Respondents contend that Rep. Grayson may not be held  
7 personally liable for the original March 21, 2010 e-mail solicitation.

8 On March 11, 2010, a member of the host committee invited Rep. Grayson to attend a  
9 March 25, 2010 fundraising event for Scott Maddox, a Democratic candidate for Commissioner  
10 of Agriculture and Consumer Services, a state-wide office in Florida. Rep. Grayson responded  
11 that he would not be able to attend because Congress would be in session that day, but he gave  
12 the host committee permission to use his name in connection with the event subject to his prior  
13 approval of the invitation to the Maddox event.

14 On March 20, 2010, the Grayson campaign received a draft of the invitation to the  
15 Maddox event. A Grayson campaign volunteer forwarded the draft invitation to Rep. Grayson  
16 for his approval. Rep. Grayson responded by asking whether the invitation needed to have a  
17 disclaimer. Rep. Grayson also asked that the invitation be changed to inform recipients that he  
18 would not be able to attend if Congress was in session that day.

19 On March 21, 2010, the Grayson campaign volunteer asked the Maddox host committee  
20 to change the invitation to let people know that Rep. Grayson would not be able to attend the  
21 event if votes were scheduled that day in Washington. The Grayson campaign volunteer failed  
22 to ask the Maddox committee to respond to Rep. Grayson's request for information as to whether  
23 a disclaimer was needed.

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1 The Maddox host committee responded to the Grayson campaign volunteer later on  
2 March 21, 2010 with a revised version of the invitation. The Grayson campaign volunteer never  
3 forwarded the revised version of the invitation to Rep. Grayson for his final review and approval.  
4 The Grayson campaign volunteer forwarded the revised version of the invitation to a campaign  
5 vendor who managed the Grayson campaign's e-mail list and asked the vendor to distribute the  
6 invitation to e-mail subscribers in the Winter Park, Florida area where the event was scheduled to  
7 be held.

8 Respondents contend that at all times they acted in good faith and that any violation of  
9 the Act that may have occurred was unintentional.

10 V. 1. Respondent Committee violated 2 U.S.C. § 441i(e) by disseminating a  
11 solicitation for corporate contributions in connection with a non-federal election. The  
12 Commission did not find that the Committee's violation of 2 U.S.C. § 441i(e) was knowing and  
13 willful.

14 2. Respondent Grayson will not further dispute the Commission's finding that  
15 there is reason to believe that Rep. Grayson violated 2 U.S.C. § 441i(e). A reason to believe  
16 finding is not a finding that the Respondents violated the Act, but simply means that the  
17 Commission believes a violation may have occurred. The Commission did not find that any  
18 violation that may have occurred was knowing and willful. This conciliation agreement, unless  
19 violated, is a complete bar to any further Commission action against Respondents in connection  
20 with the facts underlying this matter. See 2 U.S.C. § 437g(a)(4).

21 VI. 1. The Committee to Elect Alan Grayson will pay a civil penalty to the  
22 Commission in the amount of \$4,125, pursuant to 2 U.S.C. § 437g(a)(5)(B).

23 2. Respondents will cease and desist in committing violations of  
24 2 U.S.C. § 441i(e).

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VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained within this written agreement shall be enforceable.

FOR THE COMMISSION:

Christopher Hughey  
Acting General Counsel

BY:



Kathleen Guith  
Acting Associate General Counsel  
For Enforcement

6-13-11  
Date

FOR THE RESPONDENTS:

  
Brett Kappel  
Counsel

5/24/11  
Date

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